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EXCLUSION FROM US MARKET OF ARAMID FIBRES PRODUCED BY AKZO: GATT PANEL ENDORSES THE COMMISSION'S VIEWS

Following the termination of a dispute settlement procedure requested by the Commission, the panel concerned has given its views on the dispute between the Community and the United States regarding the AKZO case.

The panel has concluded that section 337 of the US Tariff Act of 1930 is incompatible with the GATT rules, particularly Article III:4, in that it accords less favourable treatment to imported products than to products of United States origin.

The panel has therefore recommended that the Contracting Parties ask the United States to bring the patent infringement procedures it applies to imported products into line with GATT obligations.

Origin of the AKZO case

The Dutch company AKZO manufactures synthetic fibres known as "aramid", which are used in various advanced technology industries. Its products were banned from the US market because of a complaint made against it by the US firm Dupont de Nemours under US legislation on protection of patents against imports. Dupont de Nemours complained to the ITC (International Trade Commission) that the manufacture by AKZO of the aramid fibres imported into the United States violated Dupont patents.

AKZO therefore lodged a complaint with the Commission in 1985 under the new commercial instrument (see Annex) against the procedure adopted by Dupont under section 337 of the 1930 Tariff Act, alleging that it was discriminatory and incompatible with the GATT provisions on national treatment.

In 1986 the Commission decided that there were sufficient grounds for the complaint to justify initiating an investigation under Regulation No 2641/84.

On the basis of this investigation, the Commission found in 1987 that the US legislation in question constituted an illicit commercial practice and it therefore decided to embark upon international consultations and a dispute settlement procedure in order that the US legislation be brought into line with the United States' international obligations.

The consultations having failed to produce a satisfactory settlement of the dispute, the Commission requested, at the meeting of the GATT Council on 15 July 1987, that a panel be set up in accordance with Article XXIII:2 of the GATT.

In October 1987 the GATT Council acceded to this request. The panel was instructed to examine, in the light of all the relevant GATT provisions, the facts of the case as previously formulated by the Community and to establish facts liable to help the Contracting Parties to make recommendations or give a ruling as provided for in GATT Article XXIII.

The panel's conclusions

The panel adopted a report recommending that the Contracting Parties ask the United States to bring the patent infringement procedures it applies to imported products into line with its obligations under the General Agreement.

Next stage of the procedure

The forthcoming GATT discussion, which the Commission hopes will end with the Contracting Parties adopting both the panel's report and its recommendation, will mark an important new stage in the procedure initiated by the Community regarding the United States under Regulation No 2641/84. Should this be the case, the United States will then have to take the necessary steps to remedy the situation as soon as possible. The Commission is willing to hold talks with the US authorities to examine any urgent temporary measures which might be taken pending the amendment of section 337 of the 1930 US Tariff Act.

ANNEX

The new commercial policy instrument adopted in September 1984 allows Community industry to lodge complaints against illicit trade practices by non-member countries and is intended to provide a more effective response using a range of measures to any illicit commercial practice that is causing injury to Community industry, whether on the Community market or on export markets.

Regulation (EEC) No 2641/84 of 20 September 1984.